IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16929 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YUSUFBHAI KESHARBHAI CHAUHAN

Versus

STATE OF GUJARAT (NOTICE TO BE SERVED THROUGH

Appearance:

1. Special Civil Application No. 16929 of 2003

MR HARSHAD K PATEL for Petitioner No. 1

MS Mita S Panchal for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 18/03/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order dated 25/09/03, passed by respondent no.2, for detaining the petitioner u/s.3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, "the Act"), on the ground that the petitioner was involved in four offences punishable under various sections of the Indian Penal Code during the period between 29/05/01 and 20/06/03.

2. The petitioner has challenged the above order of detention on several grounds. It has been contended that the impugned order has been passed much late after the last mentioned offence which is said to have been registered against the petitioner and that the said delay has not been explained. That the alleged activity of the petitioner does not lead to a threat to public order. That, therefore, the impugned order is illegal and deserves to be quashed and set aside.

3. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

4. The learned advocate for the petitioner has contended that the impugned activities of the petitioner do not amount to a threat to public order. If we peruse the impugned order, we find at page 18, the grounds set out by the detaining authority for issuing an order of detention against the petitioner. There, we find at page 19, four offences punishable under I.P.C. being registered against the petitioner.

5. On going through the contents of the order, it appears that these are stray incidents which may involve a threat to a law and order situation, but, it cannot be said that it may amount to a threat to public order. Therefore, there was no justification for passing an order of detention against the petitioner, on the ground that four I.P.C. offences were registered against him. It is more so when these are individual stray incidents.

6. It has also been contended that two unnamed witnesses have given their statements and the gist of the said statements has been reproduced at page 20 and 21 respectively. On going through the said statements, it is found that the petitioner used to move with deadly weapons in public place and used to issue threats. It is also alleged in the said statements that the petitioner

used to induce persons to part with money, in anticipation of return of more money. In above view of the matter, it is the observation of the detaining authority that the petitioner is a "dangerous person" and is required to be detained.

7. It is true that two unnamed witnesses have given their statements as aforesaid. However, it does not appear on record that the verification of the correctness and genuineness of the said statements was undertaken by the authority. The learned AGP has argued that if the verification of the correctness and genuineness of the statements in undertaken, then the names of the unnamed witnesses could be disclosed, and in that case, none would be prepared to give a statement.

8. It is not acceptable that while examining the genuineness and correctness of statements of witnesses, the names of the deponents would be required to be disclosed. Even without disclosing the names of unnamed witnesses, the genuineness and correctness of the statements made by them can be verified.

9. In the case of Kishor Naginbhai Parmar V/s. State of Gujarat & Ors. reported in 2000 (4) GLR 3236, it has been observed at para 12(1) and 14 as follows;

Para 12(1) : "In the instant case, it cannot be said that either the grounds of detention or the affidavit-in-reply filed by the detaining authority disclose the grounds and reasons which weighed and considered by the detaining authority for exercising powers under S.9(2) of the P.A.S.A. Act. No contemporaneous record of grounds and reasons which weighed with detaining authority for not disclosing the identity of the anonymous witnesses seems to have been made, nor it is disclosed in the affidavit-in-reply. The order of detention, has to be quashed, for the reason that except bald allegation about genuineness of fear and consequent need for withholding the identity of witnesses, there is no material to lend support to the exercise of powers u/s.9(2) of the P.A.S.A. Act. Here decision in the case of Bai Amina V/s. State of Gujarat & Ors. (1981 GLR 1186 (FB)), which is considered by Full Bench of this Court in Chandrakant N. Patel V/s. State of Gujarat, may be profitably referred to."

Para 14 : "In this view of the matter, the order

> of the detaining authority and the grounds of detention do not indicate the basis of arriving at the subjective satisfaction. A mere statement about having verified the veracity, genuineness and correctness of the fear expresses by the witnesses, under such circumstances, can be of no virtue, in absence of contemporaneous material. The detention therefore stands vitiated for want of proper exercise of powers u/s.9(2) of the P.A.S.A. Act and resultant infringement of a constitutional right of the detenu of making an effective representation due to non-disclosure of names of the witnesses. The order of detention, therefore, deserves to be quashed and set aside by allowing this petition."

10. The position in the case on hand, is almost identical to the facts mentioned in the above cited case and therefore, the principle enunciated in the aforesaid decision is required to be followed by this Court.

11. In above view of the matter, on the one hand, the registered offences are stray isolated offences which could not amount to a threat to public order and on the other hand, so far the statements of unnamed witnesses are concerned, it seems that there was no further material before the detaining authority, to support the exercise of powers u/s.9(2) of the said Act. In view of the above position, I follow the principle enunciated in the aforesaid case and consequently find that the resultant effect of the above position would be that, the valuable right of the petitioner to make effective representation under Article 22(5) of the Constitution of India has been taken away. Therefore, the further detention of the detenu will stand vitiated.

12. For the foregoing reason, this petition is allowed. The impugned order of detention dated 25/09/03 passed by respondent no.2 against the detenu, is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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